

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MARVIN GAY YOUNG,

Plaintiff,

v.

USA,

Defendant.

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CIVIL ACTION NO. 5:16-CV-00103-RWS

**ORDER ADOPTING REPORT AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Petitioner Marvin Gay Young, proceeding *pro se*, filed this motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The Court referred this matter to the Honorable Caroline Craven, United States Magistrate Judge, at Texarkana, Texas, for consideration pursuant to 28 U.S.C. § 636. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that the petition be denied. Docket No. 11.

The Court has received and considered the Report and Recommendation along with the record and pleadings. No objections to the Report and Recommendation have been filed to date.¹ The Court agrees with the Magistrate Judge's conclusions that Petitioner's arguments are time-barred by the one-year statute of limitations under 28 U.S.C § 2255(f)(1), and that Petitioner is not entitled to an extended statute of limitation under § 2255(f)(3).

Accordingly, finding no plain error in the findings of fact and conclusions of law of the Magistrate Judge, this Court **ADOPTS** the Magistrate Judge's findings and conclusions as those

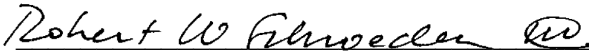
¹ Petitioner received a copy of the Report and Recommendation on April 7, 2017 (Docket No. 12).

of the Court. It is thereby **ORDERED** that Petitioner's motion is **DENIED**.

Furthermore, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir. 2000), *cert. denied*, 531 U.S. 849 (2000).

In this case, Petitioner has not shown that the issues raised by his claims are subject to debate among jurists of reason, and the questions presented are not worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED this 24th day of October, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE